



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

July 26, 2006

Brigadier General Gregg F. Martin
U.S. Army Corps of Engineers
12565 W. Center Road
Omaha, NE 68144-3869

Dear General Martin:

It has come to our attention that the U.S. Coast Guard issued a warning to mariners on July 25, 2006 concerning unsafe conditions on the lower Missouri River. Specifically, the Coast Guard has found the river impassable by working boats because the channel is too narrow and too shallow.

During the Master Manual Review and Update and related litigation, the Corps maintained that the new water conservation measures would provide sufficient water for "minimum service" navigation with an 8 foot channel depth under the current conditions. There can only be two reasons the Corps' operations are not providing an 8 foot channel now. One, the Corps' new Master Manual is based on flawed target flows that do not provide the navigation support that the Corps erroneously believed they would provide and hence are not sound. Two, the Corps is not releasing sufficient water to properly meet targets that are sound. Neither is an acceptable explanation for the Corps' failure to achieve the navigation mission.

Moreover, it is our understanding that people upstream continue to suffer the effects of drought. People all over the basin are questioning the wisdom of the "spring pulse" flows with water intake threats persisting in places like the Cheyenne River Sioux Reservation, boat ramps remaining high and dry, and inadequate flows for safe navigation and economical power generation downstream.

Nonetheless, in a letter dated July 14, 2006, you stated that the

flow targets are designed to provide the river depth necessary to maintain service to commercial navigation during the vast majority of runoff conditions experienced on the Missouri River. However, we also know that during the driest years, releases to meet these target flows may not always result in adequate river depth for commercial navigation in the lower river. In this case we have developed a contingency plan to maintain commercial navigation. The plan

BG Gregg F. Martin

July 26, 2006

Page 2

includes increased reconnaissance of the river depth, escort service for commercial navigation tows, and dredging if necessary.

This is, above all, a stunning admission that the Master Manual is not adequate to deliver the level of navigation support the Corps promised the basin and the Courts. Based on the Corps' claims, the United States Court of Appeals for the Eighth Circuit upheld the new Master Manual, believing that the Corps would provide sufficient flows for navigation in all years except "the four worst drought years out of every one hundred." This is not one of those "four worst drought years", so the Corps has represented that it will be able to provide navigation. The Corps' failure to deliver despite its promises to the Nation and the Courts is disappointing.

Beyond the fact that your letter to Ms. Muench is a stunning admission of failure, we have no recollection of any "contingency plan" being part of the Master Manual Review and Update. Please provide a copy of the plan and information concerning its development. In addition, please outline the steps the Corps has taken to implement this contingency plan – which appears to be an obvious failure in itself – to attempt to maintain navigation this summer under conditions for which the Master Manual indisputably commits the Corps to an 8-foot channel depth throughout the season and throughout the lower river. Please let me know what plans you have to make the river safe for commercial navigation from the mouth to Sioux City throughout the end of the season.

Finally, as you know, the Rivers and Harbors Act of March 2, 1945 commanded the Corps to maintain certain channel dimensions for navigation. We have been told that certain river structures intended to ensure the 9 foot deep, 300 foot wide channel authorized by Congress have fallen into disrepair. Please let us know what steps the Corps intends to take to ensure this summer's fiasco is not repeated.

We would greatly appreciate your reply by July 27, 2006, as time is of the essence in this greatly shortened navigation season. Thank you for your attention to this matter.

Sincerely yours,

JEREMIAH W. (JAY) NIXON
Attorney General


William Bryan
Deputy Chief Counsel

WJB